

## REMARKS/ARGUMENTS

This amendment is responsive to the Office Action dated July 3, 2003. In the application, claims 1 - 11 are pending and each claim stands rejected in the Office Action as being unpatentable over alleged admitted prior art in combination with one or more patents. Applicant has carefully reviewed the examiner's arguments and the alleged admitted prior art, and believes that the Office Action has taken Applicant's background out of context in forming a rejection of the present claims. As discussed below, Applicant discusses two distinct alternatives that could not logically be combined as the Office Action suggests, and that Applicant has not admitted what the Office Action claims. Because the basis for the rejection of the claims relies primarily on the error construing the background of the present application, Applicant respectfully requests reconsideration of the claims based the comments below.

Ticket counting machines in the field addressed by the present invention must account for the many orientations that a ticket can be fed into a counting device. If an attendant is there to introduce the tickets, the attendant can ensure that the tickets are oriented correctly and that the barcode can be placed in the right position for reading. However, in many cases a customer will be required to insert the tickets to be counted, and a customer cannot be relied upon to properly feed a ticket into the counting device. Because the ticket can be fed upside down, prior art barcode reading systems would require light sources and detectors on both sides of the ticket to read the reflections on both sides. However, as discussed in the specification this adds significantly to the cost and complexity of the counting device. The present invention addresses this problem by using translucent tickets with an opaque pattern, allowing the ticket to be detected regardless of orientation. Applicant respectfully submits that this solution to the problem was not apparent in the prior art, and there has been no suggestion or teaching that would impel one to combine references as suggested by the Office Action, except from the Applicant's original disclosure.

### **The Alleged Admitted Prior Art**

The "Background of the Invention" section of the present application discusses the prior art method of counting tickets using the method of placing a notch or hole between tickets, as shown in Figures 1 and 2. On page 1 at line 21, Figure 3 is identified as a counting device for reading the tickets of Figures 1 and 2 with the notches. As discussed on page 2, the tickets are counted when light is shown on the tickets and a detector is placed on the opposite side of the ticket to read light passing through the notch. However, as further discussed on page 2 there are several significant shortcomings of the notches-counting system, including misreading the signal strength due to misalignment of the notch, and jamming of the ticket counting machine due to the notches. The specification also states:

**"Additional drawbacks to this method include the fact that the ticket **must be opaque so that light does not pass through the ticket.**" [Specification, page 2 lines 23 - 24].**

This requirement is obvious once one understands that if light passes through the ticket, then the detector cannot distinguish light passing through the notch from that passing through the

ticket, and the system cannot function properly. As such, the apparatus of Fig. 3 cannot be used with translucent tickets.

On page 3 of the specification, a second distinct and separate method of counting tickets is discussed:

**"Another method** of counting tickets involves printing a barcode on the ticket and using one of the widely available barcode scanners to count the ticket. ... **Since the barcode works on reflective principles**, a ticket needs to be oriented correctly when inserted into a ticket counting mechanism." [Specification, page 3, lines 3 - 7].

Note that by "reflective" the barcode system discussed would require a detector on the same side of the ticket as the light source. In other words, the barcode system is not compatible with the previously discussed notch system. The section concludes by noting the art would benefit from a ticket counter that solves both the notch system shortcomings and the barcode reader shortcomings:

"Accordingly, what is needed is a tool to accurately count tickets that is not dependent upon variations in ticket notch size **or** subject to the constraints of typical reflective barcode scanning techniques." [Specification, page 3 lines 15 - 17].

### The Rejection of Claim 3

The Office Action rejected claim 3 under 35 U.S.C. §102 as being anticipated by the Applicant's alleged admitted prior art. However, in reviewing the rejection it is clear that the Office Action combines the two distinct options (notches and barcodes) as if they were one prior art system.

"The admitted prior art discloses a ticket counter device 16 also serving as a housing that includes rollers 20 to pull the tickets 10 into the counter device 16 (Page 1, lines 18+). The admitted prior art also discloses that tickets printed with a barcode (Page 3, lines 3+). Fig. 3 of the present application, also admitted as prior art, shows an illuminator 22 serving as a light source positioned on a first side of the ticket and a detector 26 positioned on a second side of the tickets." [Office Action, ¶4].

Thus, the examiner combines the description of the barcode system on page 3 with Figure 3, which illustrates the notch reading system. However, as noted these are two different ticket counting systems that are not compatible with each other, and their combination by the Office Action under the auspice that the Applicant admitted their combination is without support. Nothing in the specification or the prior art suggests combining these two distinct systems, and the Office Action's reliance on this combination reads the specification out of context.

Because as the passage above states that the ticket must be opaque for the system of Figure 3 to operate, a ticket without a notch could not be detected by the apparatus of Figure 3. Also, the passage states correctly that barcode ticket readers of the prior art operate on a light reflecting technology, and thus placing a detector on the opposite side of the light source for the

barcode ticket reader described in the Background of the Invention would not detect tickets. The Office Action apparently combined these two distinct systems in rejecting claim 3 without any logical or supportable basis for doing so. The alleged admitted prior art ticket counting system relied upon by the Office Action to reject the claims of the present application does not exist in either the patent's specification or the prior art, and Applicant respectfully submits that the rejection of the claims based on this fictitious system is improper.

Claim 3 has been amended to clarify the invention and the role of the light source, detector, and pattern. It is respectfully submitted that Claim 3 as amended clearly distinguishes over the prior art discussed in the specification, and Applicant requests that the rejection of Claim 3 be withdrawn and notification of its allowance is earnestly solicited.

### **Rejection of Remaining Claims**

The Office Action rejects each of the remaining claims based upon the incorrect assertion that the Applicant admitted the prior art barcode ticket system is used in Figure 3. As explained above, the two systems are mutually exclusive and could not work together, and Applicant does not teach, suggest, nor admit such a combination. Each rejection therefore improperly relies upon the Office Action's misconstruction of the Applicant's "Background of the Invention" portion of the specification, and when placed in the correct context the specification does not support the Office Action's rejection. As such, it is respectfully submitted that the rejection of the claims based on the alleged Applicant's admitted prior art are improper and reconsideration is requested.

The Office Action applies Goodman to Applicant's disclosure, but Goodman does not teach or suggest a translucent ticket or a counting operation. The Office Action claims, but does not explain why, the ticket counting method would be "enhanced . . . by adding or increasing information storage on the ticket ...." There is no support in the record as to why increasing the information stored on a disposable paper ticket enhances the counting function, which simply acknowledges the presence or absence of a ticket. Moreover, there is nothing in Goodman or the other cited references that suggests to one of ordinary skill that Goodman would be suitable or appropriate for **counting** tickets. Goodman is directed to increasing the distance between the sensing apparatus and the substrate without resorting to imaging optics. [Col. 1-2]. This is achieved by selecting a light source with a narrow spectral band in combination with a spectral band pass filter between the detector and the substrate. This sophisticated methodology is the antithesis of the modest technology of the present invention, which simply requires that the pattern be detected so that a ticket's presence is verified.

The absence of any teaching or suggestion in the art to apply Goodman to a ticket counting machine as proposed by the Office Action or justify the combination with more than mere unsupported speculation renders the rejections unsound. It appears that the Office Action sought to locate in the art elements admittedly missing from its asserted primary reference, and then formulate a hypothesis as to why the combination might be beneficial, rather than review the art to see if an actual suggestion to combine the references exists in the prior art. However, it is the latter and not the former approach that fulfills an obviousness rejection and using the Applicant's claims as a template from which to piece together an assortment of unrelated prior art

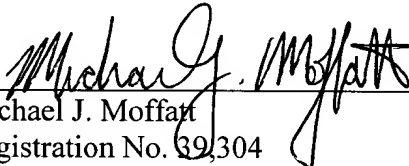
is improper.

The remaining claims not only rely upon the mischaracterization of the Applicant's specification, but also rely upon the mischaracterization improperly combined with the Goodman reference. Goodman cannot be properly combined with Applicant's specification, and each claim relying upon their combination is improper. Accordingly, Applicant submits that Claims 1, 2, and 4 - 11 are patentable over the prior art of record.

In light of the foregoing, Applicant contends that the rejection of Claims 1 - 11 are unsupportable and are properly withdrawn. If the examiner believes that a telephone conference will further the prosecution of this application, the examiner is invited to contact the undersigned at the number below.

Respectfully submitted,

FULWIDER PATTON LEE & UTECHT, LLP

  
\_\_\_\_\_  
Michael J. Moffatt  
Registration No. 39,304

Fulwider Patton Lee & Utecht, LLP  
200 Oceangate, Suite 1550  
Long Beach, CA 90802  
Telephone: (562) 432-0453  
Facsimile: (562) 435-6014